IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Civil Writ Petition No. 4007 of 2006

Date of decision: April 16, 2007

Ramesh Kumar and others ... Petitioners.

Versus

State of Punjab and others ... Respondents.

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Present: Mr. Deepak Arora, Advocate
for the petitioners.

Mr. Amol Rattan, Addl.AG Panjab
for respondent no.1.

Mr. Mandeep S. Bedi, Advocate
for respondent nos. 2 and 3.

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CORAM: HON'BLE MR. JUSTICE M.M.KUMAR

HON'BLE MR.JUSTICE RAJESH BINDAL

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M. M. KUMAR, J (Oral)

The short issue raised in this petition is for issuance of a writ in the nature of certiorari for quashing of impugned letters/orders dated 2.11.2005 (Annexures P-1 to P-23) directing the recovery of certain excess amounts paid to the petitioners in respect of the period starting from September, 1988 to August, 1997. The aforementioned recovery is sought to be effected on the basis of an audit objection where it has been alleged that excess amount has been paid towards House Rent as well as Compensatory allowance in respect of the aforementioned period. The orders suggest periodical recovery from the salary of the petitioners.

Mr. Deepak Arora, learned counsel for the petitioners has argued that the petitioners have no grievance against the re-fixation of their salaries but submits that no recovery could be effected from them in view of settled principle of laws as laid down by Hon'ble the Supreme Court in case of **Sahib Ram** v. **State of Haryana,** 1995 (1) SCT 668. According to the learned counsel, there is no element of fraud or misrepresentation on the part of the petitioners and in these circumstances no recovery can be fastened on them.

However, Mr. Mandeep S. Bedi, learned counsel appearing on behalf of respondent nos. 2 and 3, has argued that once it is accepted that payment of excess amounts has been made to the petitioners, then the natural consequence of recovery must follow. According to him, such a course would be available by permitting the respondents to recover the amounts by way of easy instalments.

After hearing the learned counsel for the parties, we are of the considered view that in **Sahib Ram'** case (supra)**,** Hon'ble the Supreme Court has categorically laid down that no recovery could be effected from an employee in the absence of misrepresentation or fraud on the part of the employee. Accordingly, the orders dated 2.11.2005 issued to the petitioners (Annexures P-1 to P-23) are hereby quashed and it is directed that no recovery shall be made from the petitioners.

Writ petition stands disposed of.

(M. M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

April 16, 2007

RS